



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/572,574

03/17/2006

Edeltraud Blaeser

283578US0PCT

2746

22850

7590

03/04/2010

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

ZAREK, PAUL E

ART UNIT

PAPER NUMBER

1628

NOTIFICATION DATE

DELIVERY MODE

03/04/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No. 10/572,574	Applicant(s) BLAESER ET AL.	
	Examiner Paul Zarek	Art Unit 1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>07/31/2009, 08/10/2009, 12/09/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. Claims 1-4 have been amended and Claims 19 and 20 have been added by the Applicant in correspondence filed on 11/03/2009. Claims 1-20 are currently pending. Newly added Claim 20 is drawn to a different statutory category than Claims 1-19 and would have been presented had it been presented in the original claims. Thus, Claims 1-19 are elected by original presentation. Claim 20 is withdrawn as being drawn to a nonelected invention. Claim 4 is withdrawn as being drawn to a nonelected species. Claims 1-3 and 5-19 are examined herein. This is the second Office Action on the merits of the claim(s).

RESPONSE TO ARGUMENTS

2. Claim 1 was objected to because there was a hyphen in the middle of “substances.” This objection is moot in light of Applicants’ amendment to Claim 1.

3. Claims 1-3 and 5-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Viscovitz (International Application no. WO 01/30315, provided in IDS) in further view of Kipp, et al., (US PreGrant Publication no. 2004/0022862). Applicants traversed this rejection on the grounds that these prior art do not teach or fairly suggest the invention. Specifically, Applicants argue that Viscovitz is of no “particular relevance” to the instant application by virtue of its classification as a category “A” reference on the International Search Report. Applicants further contend that Viscovitz does not teach the presence of component a) (ethoxylated amine) and that it teaches away from using component b) (polyethylene glycol). Applicants are uncertain as to

Art Unit: 1628

the status of Chiarelli, et al. (US PreGrant Publication no. 2003/0147825), and whether or not the claims are rejected over Chiarelli, et al., in addition to Viscovitz and Kipp, et al. Applicants assert that Chiarelli, et al., is nonanalogous art because it is directed to personal care compositions rather than skin cleansing compositions for removing ink; and that whereas the instant composition preferably includes no water, those disclosed in Chiarelli, et al., are emulsions or inverse emulsions (e.g. require the presence of water). Thus, Applicants assert that there is no reason to adjust the pH of a composition. Finally, Applicants challenge that Kipp, et al., do not teach that it would be a good idea to use polyethylene glycol in the skin cleansing compositions of Viscovitz. Respectfully, Examiner does not find Applicants' arguments persuasive.

4. To clear up the record, Claims 1-3 and 5-18 stand rejected over Viscovitz and Kipp, et al. Chiarelli, et al., was utilized as an evidentiary reference to support the statement that the elected species of ethoxylated amine, PEG-15 cocamine, is a well-known pH adjuster. This fact exists independent of the fashion in which PEG-15 cocamine is utilized in Chiarelli, et al.

5. Viscovitz teach a skin cleansing composition for the removal of ink, comprising a peroxide releasing agent (oxidizing agent), such as percarbonate, and a low molecular weight alcohol (pg 1, lines 4-9), polyhydric alcohol, preferably having between 1 and 12 carbons (pg 6, lines 13-15), polyethylene glycol, in general, as the solvent (pg 6, lines 23-25), abrasives, (pg 7, lines 5-30, thickeners (aka viscosity-building agents), which can be abrasives of (pg 7 line 31 to pg 8, line7), ethoxylated and propoxylated fatty alcohols as a surfactant (e.g. fatty alcohol polyglycol ether) (pg 8, lines 11-18), pH adjusters (pg 8, lines 19-24), and chelating (or complexing) agents, such as EDTA (pg 8, lines 25-28). Viscovitz teaches that the disclosed

Art Unit: 1628

composition contains no water, and that water is not expected to materially affect the nature of the composition (pg 9, lines 10-14). Examiner draws Applicants' attention to the presence of pH adjusters (pg 8, lines 19-24) in the waterless skin cleansing composition of Viscovitz. Chiarelli, et al., teach that PEG-15 cocamine is a well-known pH adjuster, such that the skilled artisan would be motivated to use it to adjust the pH of the composition. Moreover, Examiner notes that pH measures the presence of hydrogen ions (protons) in a composition, and does not require the presence of water. Thus, PEG-15 cocamine is utilized in the Viscovitz composition as a pH adjuster.

6. Contrary to Applicants' assertion, Viscovitz does not teach away from using polyhydric alcohols, such as polyethylene glycol. The relevant passage states: "Some polyhydric alcohols such as polyethylene glycol or propylene glycol could also be used because of their low toxicity, but the use of these polyhydric alcohols do not provide the enhanced ink removal properties desired of the present invention." (pg 6, lines 23-26) Viscovitz does not state that polyethylene glycol is incapable of removing ink; rather, he indicates that in the spectrum of ink-removal products, polyethylene glycol is as robust as ethanol or isopropanol. However, Viscovitz provides a motivation to use polyethylene glycol, said motivating being its low toxicity. "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994)" (MPEP § 2145(X)(D)(1)). In the instant case, Viscovitz provides variables the artisan must weigh (low toxicity versus robust ink removal) when determining which low molecular weight alcohol to use.

Art Unit: 1628

7. Applicants' argument that Viscovitz is of no particular relevance to the instant application due to its classification as a category "A" reference on the International Search Report for the parent International Application PCT/EP05/04633. Examiner is not beholden to the characterization of references of the ISR. Moreover, it is the opinion of the Examiner that the information contained within Viscovitz is materially relevant and particularly relevant to the instant application.

8. Viscovitz does not teach the claimed weight percentages, specify a low molecular weight PEG, or explicitly contemplate the elected species. The use of PEG-15 cocamine was discussed above. Kipp, et al., teach that numerous polyethylene glycols, all of which read on component b), are well-known solvents (para 063). Thus, in the absence of unexpected results, the polyethylene glycols disclosed by Kipp, et al., are considered obvious variants of each other. Adjusting the relative weight percentages of the components is considered routine optimization, within the purview an art worker. See *In re Aller*.

9. For the reasons set for above and previously, the claimed invention would have been considered *prima facie* obvious over Viscovitz, in view of Kipp, et al., by one of ordinary skill in the art at the time the invention was made. Therefore, the rejection of Claims 1-3 and 5-18 under 35 U.S.C. 103(a) is maintained. Applicants' amendments to Claims 1-4 are not sufficient to overcome this rejection.

10. Newly added Claim 19 is examined on its merits and the following **FINAL** rejection is made.

Claim Rejections - 35 USC § 103

11. The text of Title 35, U.S.C. § 103(a) can be found in a prior Office action.
12. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viscovitz (above) in further view of Kipp, et al. (above).
13. Claim 19 limits the composition of Claim 1, such that one or more monohydric alcohols do not comprise more than 40% by weight of the composition.
14. Viscovitz and Kipp, et al., were described above and previously. Briefly, these prior art teach the claimed composition comprising components a) through j). Viscovitz teach that the desired range of alcohol is between about 40 to 80%, by weight (pg 6, lines 15-17). Viscovitz does not explicitly teach a weight percentage of monohydric alcohol below about 40%. However, Viscovitz teaches that polyhydric alcohols, such as polyethylene glycol, can be used in place of monohydric alcohols and may be desirable due to their lower toxicity (pg 6, lines 23-26). Furthermore, it would be within the purview of the art worker to adjust the amount of monohydric alcohol to below 40% by weight of the composition of Viscovitz and make up the remainder with polyhydric alcohol. This is considered routine optimization, which is not considered a patentably distinguishing feature of the invention. Therefore, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to produce a skin cleansing composition with less than 40% by weight of a monohydric alcohol.

Conclusion

15. Claims 1-3 and 5-18 remain rejected. Claim 19 is newly rejected.

Art Unit: 1628

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Zarek whose telephone number is (571) 270-5754. The examiner can normally be reached on Monday-Thursday, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PEZ

/San-ming Hui/
Primary Examiner, Art Unit 1628